WP(C) 6586/2005
BEFORE
THE HON'BLE MR. JUSTICE B.K.SHARMA
JUDGMENT AND ORDER (ORAL)

The decision of the Life Insurance Corporation of India (L.I.C.I.) to te rminate the insurance agency of the petitioner is the subject matter of challeng e in this writ petition. The petitioner being aggrieved by Annexure-'C' order da ted 10.8.2005 terminating his service as an insurance agent with the further sti pulation that he would also forfeit all future renewal commission and other bene fits, has invoked the writ jurisdiction of this Court.

2. The petitioner, while was working under the LICI as its agent with Agen cy Code No.559/486, North Lakhimpur Branch, was issued with Annexure-'A' show ca use notice dated 9th November, 1999 asking him to show cause as to why his agenc y would not be terminated. Show cause notice was issued under Regulation 8 and 16 of the Life Insurance Corporation of India (Agents) Regulation, 1972 as empow ered under Schedule-I of Regulation 3 (1) (e). The allegation made in the show cause notice was that the petitioner failed to discharge his function as LICI agent as set out in Regulation 8 (e) of the Regulation and acted in a manner pre judicial to the interest of the Corporation and thus, violated Regulation 16(1) (a)(b)&(d) of the Regulation.

3. The petitioner had the occasion to introduce a proposal bearing No.3336/ 486 on 15.2.1996 on the life of one Smt. Padma Devi with nominee Shri Aswini Kum ar Nath, her grand-son. Her age was recorded in the proposal form as 50 years a nd that of the nominee as 36 years. The nominee was stated to be the grand-son of Smt. Padma Devi.

4. The aforesaid policy resulted into policy bearing No.440598922 with the risk commencing from 15.2.1996 with the assured sum of Rs.75,000/-. The policy holder Smt. Padma Devi expired on 7.6.1996. The claim made on account of her dea th was investigated upon and upon such investigation, it was found that the age of the nominee Shri Aswini Kumar Nath was in fact, 37years-2months-3days on the date of the proposal (15.2.1996). The difference of age between Smt. Padma Devi and her grand-son being only 13 years, it was alleged that Smt. Padma Devi decl ared her age falsely as 50 years.

5. According to the allegation made in the show cause notice, the petition er while acting as the agent of the LICI failed to discharge his duty and funct ion attracting the provisions of the Regulation of 1972, as noted above. Thus, in a nutshell, the attribution made against the petitioner was that he failed t o verify the correct age of Smt. Padma Devi, which resulted in violation of the aforesaid provisions of the Regulation.

6. In response to the show cause notice, the petitioner submitted his reply on 18.11.1999. In his reply, he had contended that he did not violate the prov isions of the Regulation of 1972. In the reply, the petitioner indicated that w hen it came to his notice that the age declared by the said Smt. Padma Devi was doubtful, he requested the Development Officer one Shri Shyamal Baruah, Code No. 625/486 to refund the deposited amount to Smt. Padma Devi. According to the pet itioner, the Development Officer assured him of doing the needful. In the reply , refuting the allegation made in the show cause notice that the petitioner act ed in a manner prejudicial to the interests of the Corporation, the petitioner s tated that he did not try to hide anything inasmuch as in the proposal form, the respective age of Smt. Padma Devi and her grand-son Shri Aswini Kumar Nath was clearly indicated and thus, at best, it could have been a bonafide mistake on the part of the petitioner.

7. Thus, in a nutshell, the defence of the petitioner was that he did not h ide anything and he did not do anything stealthily. He asserts that when some

doubt had arisen, the same was intimated to the immediate superior authority and in spite of that if the proposal was materialized, the petitioner could not have been made liable for the same.

8. As noticed above, the show cause reply was submitted by the petitioner on 18.11.1999. As per the requirement of Regulation 16 (3) where the competent authority proposes to take action under Sub-regulation (1) it may direct the agent not to solicit or procure new life insurance business until he is permitted by the competent authority to do so. Although the petitioner was issued with the show cause notice on 9th November, 1999, the respondent-Corporation did not take recourse to Regulation 16 (3) and allowed him to function as their agent. In fact, as reflected in the affidavit-in-reply filed by the petitioner, he rather earned reputation by doing business for the Corporation. In this connection, the petitioner has annexed Annexures-'D' and 'E' certificates dated 8.8.2000 and 4.3.2004 by which the petitioner was apprised of his brilliant performance. For a ready reference, the said two certificates are reproduced below :-

It gives me a lot of pleasure to congratulate you for your brilliant performance during the last Financial Year which has not only brought honour to your Branch Office but to Jorhat Divisional Office also. We are really proud of you because of your endeavour and excellent salesmanship.

This year also we wish to see you climbing higher and higher in the ladder of success. To make your task more interesting and challenging we have floated a NB COMPETITION for all Agents for the month of AUGUST, 2000. We are very much sanguine of your participation and victory in this competition under Category-II.

With Best Wishes.

Yours sincerely,
Sd/-
(A. Swargiary)

CERTIFICATE OF PERFORMANCE

This certificate of Performance is awarded to Shri Binoy Sarmah Agency code No.00559/486 of N. Lakhimpur Branch under Jorhat Division for the New Business Performance in the Competition floated in the month of February, 2004.

Sd/- Sr. Divisional Manager

9. After the aforesaid show cause notice dated 9.11.1999 and the reply furnished by the petitioner on 18.11.1999, the respondent-Corporation did not do anything in the matter and rather, extracted the business from the petitioner showering praises on him, as reflected in the aforesaid two certificates. However, after about 6 years of the show cause notice and the reply thereto, the respondent-Corporation terminated the agency by the impugned order dated 10.8.2005. The impugned Annexure-'C' order/communication is reproduced below :-

Re : Termination of Agency.

Dear Sir,

In pursuance of our letter ref. JDO/Claims/Repdn./NL. Dated 31.10.97, Central Office letter ref. CO/MKTG/CS/CRC/8259 dated 31.12.98, Ref. Our Show Cause Notice dated 09.11.99 and Zonal Office letter ref. EZ/MKTG/CRM/Secy., Dated 01.08.05 your service is hereby terminated with immediate effect as per Regulation 16(1)(a)(b)(d) and Regulation 8(2)(b) of Life Insurance Corporation of India (Agents) Regulation, 1972.

It is also informed to you that all future renewal commission and other benefits if any payable have been forfeited by the Competent Authority.

Yours faithfully,
Sd/-
Sr. Divisional Manager.

10. On perusal of the aforesaid order dated 10.8.2005, it is seen that the services of the petitioner as insurance agent has been terminated as per Regulation 16 (1) (a) (b) & (d) and Regulation 8 (2) (b) of the aforesaid Regulation of 1972. In addition, the petitioner has also been deprived of all future renewal commission and other benefits. Ironically, there is no mention in the impugned order about the reply submitted by the petitioner. Thus, it is not known as to whether the respondents, in fact, had taken into consideration the explanation furnished by the petitioner towards issuance of the impugned order dated 10.8.2005. The impugned order simply mentions about the show cause notice and the decision to terminate the agency of the petitioner falling back on the provisions of the aforesaid Regulation. Coupled with this, the future renewal commission and other benefits which are likely to be paid to the petitioner have also been forfeited. Thus, here is a case, in which the respondents, after 6 years of show cause notice and the reply thereto, have issued the impugned order of termination, but on the other hand, during the intervening period, they extracted the services of the petitioner, about which mention has been made above.

11. In the affidavit-in-opposition filed by the respondents, they have justified their action making a reference to the provisions of Regulation 8 and 16 of the aforesaid Regulation. They have also referred to other provisions of the Regulation so as to contend that the petitioner has got alternative remedy by way of preferring appeal against the impugned order. In the affidavit-in-opposition, the respondents have annexed the copy of the initiation of the proposal form in which the age of Smt. Padma Devi and her nominee Shri Aswini Kumar Nath were reflected as 50 and 36 respectively. It is in this context, the petitioner in his reply, had contended that he did not do anything stealthily and that everything was open. The respondents have also annexed copy of the letter dated 31.10.1997 (Annexure-R/7 to the reply affidavit) addressed to the nominee Shri Aswini Kumar Nath. By the said letter, the claim was repudiated on the ground that his grand-mother namely, Smt. Padma Devi falsely stated her age to be 50 years in the proposal form prepared on 15.2.1996.

12. The aforesaid letter further reveals that said Smt. Padma Devi in her personal statement signed by her on 15.2.1996 and also at the time of medical examination declared her age as 50 years. So, it is on the basis of the declaration made by Smt. Padma Devi that her age was recorded in the proposal form. There was no endeavour on the part of the petitioner to do anything which can be said to be by way of committing any fraud on the respondents-Corporation. Everything was open and it was rightly contended in the show cause reply that there was no endeavour to hide anything. Perhaps, this is precisely the reason as to why the respondent-Corporation, while repudiating the claim of the nominee by the said letter dated 31.10.1997, never attributed any guilt on the part of the petitioner.

13. Apart from the above, the respondents, in their counter affidavit, have not denied the plea of the petitioner that he in fact, had reminded the Development Officer about his doubt in respect of the proposal. The only statement made in the affidavit is that since in the meantime, the Developmental Officer expired, the facts stated by the petitioner in his show cause reply could not be ascertained. Coupled with this, in the impugned order dated 10.8.2005, there is no mention about the plea of the petitioner as was raised in the show cause reply. In fact, there is no whisper about the show cause reply submitted by the petitioner. The impugned order has been passed solely on the basis of the show cause notice without taking into consideration the show cause reply submitted by the petitioner on 18.11.1999.

14. Regulation 8 under the head - 'Functions of agents' provides that every agent shall solicit and procure new life insurance business which shall not be less than the minimum prescribed in these regulations and shall endeavour to conserve the business already secured. The agent is to make all reasonable inquirie

s in regard to the lives to be insured before recommending proposals for accept ance, and bring to the notice of the Corporation any circumstances which may adv ersely affect the risk to be underwritten. Further, Regulation 8 (c) provides that the agent shall take all reasonable steps to ensure that the age of the lif e assured is admitted at the commencement of the policy.

15. As per Regulation 8 (b), the agent is to bring to the notice of the Corp oration any circumstance which may adversely affect the risk to be underwritten. It is the specific case of the petitioner that he in fact, had brought the cir cumstances regarding the age declared by said Smt. Padma Devi to the notice of t he Development Officer. This plea of the petitioner has been simply brushed asi de by the respondent-Corporation by stating that since the Development Officer h as already expired, no explanation can be furnished. As per Regulation 8 (c), t he agent is to take all reasonable steps to ensure that the age of the life assu red is admitted at the commencement of t he policy. As noticed above, it is the definite plea of the petitioner that he had expressed his doubt about the age o f Smt. Padma Devi before the Development Officer. Thus, it cannot be said that t he petitioner acted contrary to what is provided under Regulation 8 (2) (b) of t he Regulation.

16. Regulation 16 (a) (b) & (d), taking recourse to which the agency of the petitioner has been terminated, provides for the same, if the agent upon failure to discharge the function to the satisfaction of the competent authority; actin g in a manner prejudicial to the interests of the Corporation and if it is found that in the agency application submitted by the agent or in regard to explanat ion furnished by him as an agent in respect of any proposal is not true. If the petitioner has not violated the provisions of Regulation 8, it cannot be said th at he has violated the provisions of Regulation 16. In the proposal form, the respective age of Smt. Padma Devi and her nominee Shri Aswini Kumar Nath was cle arly depicted. Had it been the intention of the petitioner to commit any fraud, he would have done the same stealthily. It is in this context, it was his specif ic denial in the show cause reply that the petitioner had not violated any of th e provisions of the Regulation. The particular age was declared by Smt. Padma D evi even at the time of her medical examination and in her statement. At best, it cannot be said to be case of bonafide mistake and/or negligence on the part o f the petitioner, but certainly the same cannot be said to be a misconduct and/ or an act on the part of the petitioner so as to attract the provisions of Regu lations 8 and 16 of the Regulation.

17. Mr. B.C. Pathak, learned counsel representing the Corporation has placed reliance on the decision of the Delhi High Court as reported in AIR 2004 DEL. 2 91 (Chandra Prabha Dogra v. LIC of India). As in the instant case, in that case also, the agency of the petitioner was terminated. Upholding termination of the agency, it was held by the Delhi High Court that the termination of the agency was justified since there was misappropriation of claims. In that case, the agen t acted in a fraudulent manner. The same is not the case in hand. Thus, I am o f the considered opinion that the case is totally inapplicable in the present f act situation of the case.

18. This now leads us to the objection raised by Mr. Pathak, learned counsel representing the Corporation that in view of the alternative remedy available to the petitioner by way of appeal before the appellate authority, as provided f or in the Regulation, the writ petition is not maintainable. Apart from the fac t that the plea of alternative remedy gets somewhat diluted, once the writ peti tion is admitted for hearing, there is no gainsaying that even in case of alter native remedy, there cannot be an absolute bar for entertaining the writ petitio n. In Whirlpool Corporation v. Registrar of Trade Marks, reported in (1998) 8 S CC 01, it has been held that the alternative remedy is not a constitutional bar to the High Court but is a self-imposed restriction. It has been held that unde r 3 (three) circumstances, the alternative remedy cannot operate as a bar. They

are -

1) Where the writ petitioner seeks enforcement of any of the fundamental rights;

2) Where there is violation of principles of natural justice; and

3) Where the orders or proceedings are wholly without jurisdiction and vires of the Act is challenged.

19. Likewise, in ABL International Limited. V. Export Credit Guarantee Corporation of India Limited, reported in (2004) 3 SCC 553, dealing with the question of maintainability of the writ petition, the Apex Court held that in an appropriate case, the writ Court has the jurisdiction to entertain the writ petition even involving disputed question of fact and there is no absolute bar in regard thereto.

20. In Harbanslal Sahnia v. Indian Oil Corporation Ltd. reported in (2003) 2 SCC 107, it has been held that the rules of exclusion of writ jurisdiction by availability of alternative remedy is of discretion and not one of compulsion. In that case, the petitioner's dealership was terminated and the Apex Court observed that the petitioners should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceeding. The Division Bench of this Court in State of Assam v. Bhagya Kalita, reported in 2006 (Suppl.) GLT 550 held that even in contractual matter, if the State acts arbitrarily, the aggrieved party can approach the writ Court. In Ashish Gupta V. IBP Co. reported in AIR 2006 Del. 57, the Delhi High Court held that the respondents after terminating the dealership of the petitioner in spite of existence of arbitration clause and bypassing the same cannot later on rely upon the same to shut the doors of the Court.

21. In the instant case, as noticed above, the impugned order even does not suggest, that the reply to the show cause notice furnished by the petitioner was taken into consideration. There is no whisper of the same. Coupled with this, the petitioner's agency has been terminated after long 6 years of the show cause notice and the reply thereto. It has been rightly contended by Mr. G. Uzir, learned counsel for the petitioner that during this period of 6 years, it was legitimate on the part of the petitioner to think that the respondent-Corporation being satisfied with the explanation furnished by the petitioner, has abandoned the proceeding. After 6 years of the issuance of the show cause notice and furnishing of the reply by the petitioner, the respondent-Corporation by a stroke of pen terminated the agency of the petitioner without any discussion of the material whatsoever. Such arbitrary exercise of power falls in the realm in the violation of the principles of natural justice.

22. After the petitioner had furnished his explanation, as was asked for, the respondent-Corporation sat over the matter for long 6 years and thereafter, terminated the agency without affording any opportunity to the petitioner. Thus, there being gross violation of the principles of natural justice, the plea of the respondents, so forcefully argued by Mr. Pathak, learned counsel representing the Corporation, that the writ petition is not maintainable there being alternative remedy cannot be accepted. Termination of the agency was a serious step. By such termination, the livelihood of the petitioner was taken away. That was done after long 6 years of the show cause notice and the reply thereto. But in the meantime, as noticed above, the petitioner could get business for the Corporation, which they have also gladly accepted showering praises on the petitioner.

23. For all the aforesaid reasons, discussions and conclusion, I am of the considered opinion that the writ petition deserves to be allowed, which, I accordingly do. The impugned annexure-'C' order dated 10.8.2005 is set aside and quashed. Consequently, the agency of the petitioner gets revived. The forfeitures as indicated in the impugned order dated 10.8.2005, are also not sustainable and

consequently, the petitioner would be entitled to future renewal commission and other benefits, if any, admissible to him under the rules.

24. Writ petition is allowed. There shall be no order as to costs.